

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

BEFORE:-

Mr. Justice Sardar Muhammad Shamim Khan, Chief Judge.
(In Chamber)

Crl. Appeal No. 10 of 2024

Moutbar Khan etc (Petitioners)

Versus

The State (Respondent)

Present:-

Mr. Aurangzeb Khan, Advocate for petitioners
Mr. Mir Muhammad Prosecutor-General for State.

Date of hearing: **03.05.2024**

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge:- Through instant Criminal Appeal the petitioners namely Moutbar Khan and Alamdar Hussain seek post arrest bail in a case registered against them vide FIR No.196 of 2023 dated 09.10.2023 offences under sections 302, 324, 114 & 109 PPC registered at police station Jutial District Gilgit.

2. According to FIR, on 09.10.2023 at about 01:50 P.M, Adnan Hussain accused committed the murder of Asim Abbas son of the complainant by inflicting fire-arms injuries on his person. It has further been alleged in the FIR that on account of firing made by Adnan Hussain accused, Akash Hussain P.W also sustained bullet injury on his head. It has also been alleged in the FIR that the Moutbar Khan and Alamdar Hussain petitioners were present at the place of occurrence at the relevant time and instant occurrence was committed by Adnan

Hussain co-accused at their (petitioners) abetment . Hence instant FIR was registered.

3. Learned counsel for the petitioners contended that petitioners have falsely been implicated in the instant case on the basis of malafides; that there was no allegation against the petitioners that either they caused any injury on the person of the deceased or on the person of the injured P.W namely Akash Hussain; that as per allegation the petitioners were present at the spot and instant occurrence was committed by Adnan Hussain co-accused at their abetment but no evidence of abetment is available on the record against the petitioners; that although the petitioners are nominated in the FIR yet no specific role has been attributed to them at time of occurrence , rather only presence of the petitioners with empty hands at the place of occurrence was shown by the complainant in the FIR; that nothing was recovered from the possession of the petitioners during investigation ; that petitioners are behind the bars since their arrest and are no more required by the police for the purpose of further investigation. Thus, it is submitted that by accepting instant appeal, the petitioners may be admitted to post arrest bail.

4. Learned Prosecutor-General has vehemently opposed the instant appeal on the grounds that petitioners are nominated in FIR; that the petitioners were present at the spot and they abetted the co-accused for the commission of murder of Asim Abbas deceased son of the complainant and causing firearm injury on the person of the injured P.W namely Akash Hussain ; that the offences alleged against the petitioners come within the ambit of prohibitory clause of section 497 Cr.P.C. Thus, it is submitted that instant Crl. Appeal is liable to be dismissed.

5. Arguments heard. Record perused.

6. It has been noticed that petitioners namely Moutbar Khan and Alamdar Hussain were empty handed at the time of occurrence and there was no allegation against them that either they caused any injury on the person of Asim Abbas deceased or on the person of Akash Hussain injured P.W, rather, in the FIR only presence of the petitioners were shown at the spot and that instant occurrence was committed by Adnan Hussain co-accused at their abetment. No evidence of abetment has been mentioned by the complainant in the FIR. According to investigation of police, the petitioners were found guilty of abetment yet during

investigation the police did not collect any cogent evidence in order to establish that petitioners conspired with his co-accused; instigated his co-accused or aided his co-accused for the commission of murder of the deceased or causing injury on the person of the injured P.W and this fact has been admitted by learned Prosecutor-General for State. Admittedly petitioners are real brother of the co-accused (Adnan Hussain) who is principal accused in this case and previous enmity was also pending between the parties, therefore, prima facie, it seems that complainant has widened the net and implicated the petitioners in the instant case on account of their relationship with the principal accused. Keeping in view the facts and circumstances of the case, the case of the petitioners comes within the ambit of further inquiry. The petitioners are behind the bars since their arrest and are no more required by the police for the purpose of further investigation. No useful purpose would be served by keeping the petitioners in jail for an indefinite period.

7 For what has been discussed above, instant Crl. Appeal is accepted and petitioners namely Sami Moutbar Khan and Alamdar Hussain are admitted to post arrest bail subject to their furnishing bail bonds in the sum of Rs. 3,00,000/- (three lacs) each with one surety each in the like amount to the satisfaction of the learned trial court. These are the reasons for my short order of the even date whereby the petitioners were admitted to bail and were ordered to be released from jail forthwith, if not required in any other case. It is, however, clarified that observations made in this order are tentative in nature and shall not prejudice the case of either party at trial stage.

Justice Sardar Muhammad Shamim Khan
Chief Judge